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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

Clerk, U.S. Courts
District of Montana
Missoula Division

BENJAMIN C. BROOKS,

Plaintiff,

vs.

**MISSOULA COUNTY DETENTION
FACILITY MAIL STAFF;
CORRECTIONAL OFFICER
HARRIS; and SGT. TERA TACKETT
#549,**

Defendants.

CV 18-44-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendation on April 9, 2019, recommending that the Court grant the motion for summary judgment of the remaining defendant, Tera Tackett, and dismiss this action without prejudice. (Doc. 25.) Brooks failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*,

856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).

Having reviewed the Findings and Recommendation (Doc. 25), the Court finds no clear error in Judge Lynch's recommendation to grant Tackett's motion for summary judgment and dismiss Brooks's complaint. Judge Lynch reasonably found that Brooks failed to exhaust administrative remedies by choosing not to appeal from the denial of his grievance. (Doc. 25 at 3–6.) And the Court agrees that, because no federal claim survives, it should not exercise supplemental jurisdiction over Brooks's state law claims. (*Id.* at 6–7.) Further, the Court finds no clear error in Judge Lynch's conclusion that any appeal of this decision would not be taken in good faith. (*Id.* at 7.)

Accordingly, IT IS ORDERED that

(1) Judge Lynch's Findings and Recommendation (Doc. 25) is ADOPTED

IN FULL.

(2) Defendant Tera Tackett's motion for summary judgment (Doc. 19) is

GRANTED, and this action is DISMISSED without prejudice;

(3) The Clerk of Court shall close this matter and enter judgment in favor of

Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure;

and

(4) The Clerk of Court shall have the docket reflect that the Court certifies,

pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure

that any appeal of this decision would not be taken in good faith.

DATED this 4th day of June, 2019.



Dana L. Christensen
Dana L. Christensen, Chief Judge
United States District Court